

§ 1008.8 Disposition of claims.

The processing carrier shall pay, decline to pay, or settle each written or electronically communicated claim within 60 days after its receipt by that carrier, except where the claimant and the carrier agree in writing or electronically to a specific extension based upon extenuating circumstances. If the carrier declines to pay a claim or makes settlement in an amount different from that sought, the carrier shall notify the claimant in writing or electronically, of the reason(s) for its action, citing tariff authority or other pertinent information developed as a result of its investigation.

[47 FR 12804, Mar. 25, 1982]

§ 1008.9 Disposition of unidentified payments, overcharges, duplicate payments, and overcollections not supported by claims.

(a)(1) Carriers shall establish procedures for identifying and properly applying all unidentified payments. If a carrier does not have sufficient information with which properly to apply such a payment, the carrier shall notify the payor of the unidentified payment within 60 days of receipt of the payment and request information which will enable it to identify the payment. If the carrier does not receive the information requested within 90 days from the date of the notice, the carrier may treat the unidentified payment as a payment in fact of freight charges owing to it. Following the 90-day period, the regular claims procedure under this part shall be applicable.

(2) Notice shall be in writing and clearly indicate that it is a final notice and not a bill. Notice shall include: The check number, amount, and date; the payor's name; and any additional basic information the carrier is able to provide. The final notice also must inform payor that: (i) Applicable regulations allow the carrier to conditionally retain the payment as revenue in the absence of a timely response by the payor; and (ii) following the 90-day period the regular claims procedure shall be applicable.

(3) Upon a carrier's receipt of information from the payor, the carrier shall, within 14 days: (i) Make a com-

plete refund of such funds to the payor; or (ii) notify the payor that the information supplied is not sufficient to identify the unapplied payment and request additional information; or (iii) notify the payor of the carrier's determination that such payment was applicable to particular freight charges lawfully due the carrier. Where no refund is made by the carrier, the carrier shall advise the payor of its right to file a formal claim for refund with the carrier in accordance with the regular claims procedure under this part.

(b) When a carrier which participates in a transportation movement, but did not collect the transportation charges, finds that an overpayment has been made, that carrier shall immediately notify the collecting carrier. When the collecting carrier (when single or joint line haul) discovers or is notified by such a participating carrier that an overcharge, duplicate payment, or overcollection exists for any transportation charge which has not been the subject of a claim, the carrier shall create a file as if a claim had been submitted and shall record in the file the date it discovered or was notified of the overpayment. The carrier that collected the charges shall then refund the amount of the overpayment to the person who paid the transportation charges or to the person that made duplicate payment within 30 days from the date of such discovery or notification.

[43 FR 41040, Sept. 14, 1978, as amended at 44 FR 66832, Nov. 21, 1979]

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

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§ 1011.1 General.

(a) This part describes the organization of the Commission, and the assignment of jurisdiction and responsibilities to the Commission, individual Commissioners or employees, and employee boards.

(b) As used in this part, *matter* includes any case, proceeding, question, or other matter within the Commission's jurisdiction; and *decision* includes any decision, ruling, order, or requirement of the Commission, an individual Commissioner or employee, or an employee board.

§ 1011.2 The Commission.

(a) The Commission reserves to itself for consideration and disposition:

(1) All rulemaking and similar proceedings involving the promulgation of rules or the issuance of statements of general policy.

(2) All investigations and other proceedings instituted by the Commission, except as may be ordered in individual situations.

(3) All administrative appeals in a matter previously considered by the Commission.

(4) All other matters submitted for decision except those assigned to an individual Commissioner or employee or an employee board.

(5) Except for matters assigned to the Chairman of the Commission under § 1011.5(a)(6),

(i) The determination of whether to reconsider a decision being challenged in court;

(ii) The disposition of matters that have been the subject of an adverse decision by a court; and

(iii) The determination whether to file any memorandum or brief or otherwise participate on behalf of the Commission in any court.

(6) The disposition of all matters involving issues of general transportation importance, and the determination whether issues of general transportation importance are involved in any matter.

(7) All appeals of initial decisions issued by the Director of the Office of Proceedings under authority delegated at § 1011.8(c). Appeals must be filed within 10 days after service of the Director decision or publication of the notice, and replies must be filed within 10 days after the due date for appeals or any extension thereof.

(b) The Commission may bring before it any matter assigned to an individual Commissioner or employee or employee board.

§ 1011.3 Divisions of the Commission.

The Commission may establish such divisions as it considers necessary to handle any matter before it.

§ 1011.4 The Chairman, Vice Chairman, and Senior Commissioner present.

(a)(1) The Chairman of the Commission is appointed by the President as provided by 49 U.S.C. 10301(b). The Chairman has authority, duties, and responsibilities assigned under 49 U.S.C. 10301(f) and described in this part.

(2) The Vice Chairman is elected by the Commission for the term of 1 calendar year.

(3) In the Chairman's absence, the Vice Chairman is Acting Chairman, and has the authority and responsibilities of the Chairman. In the Vice Chairman's absence, the Chairman, if present, has the authority and responsibilities of the Vice Chairman. In the absence of both the Chairman and Vice Chairman, the senior Commissioner present, based on time of continuous service as a member of the Commission, is Acting Chairman, and has the authority and responsibilities of the Chairman and Vice Chairman.

(b)(1) The Chairman is the executive head of the Commission and has general responsibility for:

(i) The overall management and functioning of the Commission;

(ii) The formulation of plans and policies designed to assure the effective administration of the Interstate Commerce Act and related Acts;

(iii) Prompt identification and early resolution, at the appropriate level, of major substantive regulatory problems; and

(iv) The development and use of effective staff support to carry out the duties and functions of the Commission.

(2) The Chairman of the Commission exercises the executive and administrative functions of the Commission, including:

(i) The appointment, supervision, and removal of Commission employees, except those in the immediate offices of Commissioners other than the Chairman;

(ii) The distribution of business among such personnel and among administrative units of the Commission; and

(iii) The use and expenditure of funds.

(3) In carrying out his functions, the Chairman is governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission by law is authorized to make.

(4) The appointment by the Chairman of the heads of offices and bureaus is subject to the approval of the Commission. All heads of offices report to the Chairman.

(c)(1) The Chairman presides at all sessions of the Commission and sees that every vote and official act of the Commission required by law to be recorded is accurately and promptly recorded by the Secretary or the person designated by the Commission for that purpose.

(2) Regular sessions of the Commission are provided for by Commission regulations. The Chairman may call the Commission into special session to consider any matter or business of the Commission. The Chairman shall convene a special session to consider any matter or business on request of a member of the Commission unless a majority of the Commission votes either not to hold a special session or to delay conference consideration of that item, or unless the Chairman finds that special circumstances warrant a delay. Notwithstanding the two immediately preceding sentences of this paragraph, on the written request of any member of the Commission, the Chairman shall schedule a Commission conference to discuss and vote on significant Commission proceedings involving major

transportation issues, and such conference shall be held within a reasonable time following the close of the record in the involved proceeding.

(3) The Chairman exercises general control over the Commission's argument calendar and conference agenda.

(4) The Chairman acts as correspondent and speaks for the Commission in all matters where an official expression of the Commission is required.

(5) The Chairman brings any delay or failure in the work to the attention of the supervising Commissioner, employee, or board, and initiates ways of correcting or preventing avoidable delays in the performance of any work or the disposition of any matter.

(6) The Chairman may appoint such standing or *ad hoc* committees of the Commission as he considers necessary.

(7) The Chairman of the Interstate Commerce Commission and the Secretary of the U.S. Department of Transportation shall take appropriate action to implement 49 U.S.C. 1483.

(8) The Chairman may reassign related proceedings to a board of employees and may remove a matter from an individual Commissioner or employee or employee board for consideration and disposition by the Commission.

(9) The Chairman may authorize any officer, employee, or administrative unit of the Commission to perform a function vested in or delegated to the Chairman.

(10) The Chairman authorizes the institution of investigations on the Commission's own motion, and their discontinuance at any time before hearing, except for investigations under 49 U.S.C. 10708.

(11) The Chairman approves for publication all publicly-issued documents by a bureau or office, except:

(i) Those authorized or adopted by the Commission or an individual Commissioner that involve decisions in formal proceedings;

(ii) Decisions or informal opinions of a bureau or office, or an initial decision of a hearing officer; and

(iii) Documents prepared for court cases or for introduction into evidence in a formal proceeding.

§ 1011.5 Delegations to individual Commissioners.

(a) The following matters are referred to the Chairman of the Commission:

(1) Entry of reparation orders responsive to findings authorizing the filing of statements of claimed damages as provided at 49 CFR part 1133.

(2) Extensions of time for compliance with orders and procedural matters in any formal case or pending matter, except appeals taken from the decision of a hearing officer on requests for discovery.

(3) Postponement of the effective date of orders in proceedings that are the subject of suits brought in a court to enjoin, suspend, or set aside the decision.

(4) Dismissal of complaints and applications on the unopposed motion of any party.

(5) Requests for access to waybills and to statistics reported under orders of the Commission.

(6) Exercise of control over litigation arising under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a), except for determinations whether to seek further judicial review of:

(i) A decision in which a court finds under 5 U.S.C. 552(a)(4)(F) that Commission personnel may have acted arbitrarily or capriciously in improperly withholding records from disclosure; or

(ii) A decision in which a court finds under 5 U.S.C. 552a(g)(4) that Commission personnel acted intentionally or wilfully in violating the Privacy Act.

(7) Issuance of certificates and decisions when no protest is received within 30 days after an abandonment or discontinuance application is filed under 49 U.S.C. 10903 and the Commission must find, under 49 U.S.C. 10904(b), that the public convenience and necessity require or permit the abandonment or discontinuance.

(8) Issuance of certificates and decisions authorizing Consolidated Rail Corporation to abandon or discontinue service over lines for which an application under section 308 of the Regional Rail Reorganization Act of 1973 has been filed.

(b) The following matters are referred to the Vice Chairman of the Commission:

(1) Matters within the jurisdiction of the Accounting Board if certified to the Vice Chairman by the Board or if removed from the Board by the Vice Chairman.

(2) Matters involving the admission, disbarment, or discipline of practitioners before the Commission under 49 CFR part 1103.

(3) In cases of calamitous visitation:

(i) Reduced rates authorization under 49 U.S.C. 10721;

(ii) Relief from the provisions of 49 U.S.C. 10730; and

(iii) Relief from the long and short haul restrictions of 49 U.S.C. 10726.

(c) The Chairman, Vice Chairman, or any other Commissioner to whom a matter is assigned under this part may certify such matter to the Commission.

(d) The Chairman shall notify all Commissioners that a petition for a stay has been referred to the Chairman for disposition under paragraphs (a) (2) or (3) of this section. The Chairman shall also inform all Commissioners of the decision on that petition before service of such decision. At the request of a Commissioner, made at any time before the Chairman's decision is served, the petition will be referred to the Commission for decision.

§ 1011.6 Employee boards.

This section covers matters assigned to boards of employees of the Commission. Except as provided at paragraph (f) of this section, a board may certify any matter assigned to it to the Commission.

(a) *Suspension/Special Permission Board.* This board has authority to act initially on matters involving tariff provisions and railroad contracts as follows:

(1) In matters arising from 49 U.S.C. 10707 and 10708 relating to suspension and/or investigation of a tariff matter, the board is not authorized to act on petitions or requests relating to rates, classifications, rules, or practices filed in purported compliance with decisions of the Commission or to act in connection with suspensions to be taken during or after formal hearings and investigations. The board is authorized:

(i) To not suspend a rate or a classification, rule, or practice related to a rate, or to suspend such rate, classification, rule, or practice and order an investigation;

(ii) To institute investigations into rates, fares, charges, and practices of regulated carriers; and

(iii) Before the submission of evidence, to discontinue any proceeding when the proposed rate, classification, rule, or practice has been cancelled.

(iv) To handle any disputes that may arise concerning the applicability or reasonableness of motor common carrier rates under 49 U.S.C. 10762(a) (3) and (4).

(2) In matters arising from 49 U.S.C. 10726, the board is authorized to grant or withhold relief from the long and short haul transportation requirements of that statute, except for proceedings made the subject of formal hearings, matters prompted by an order or requirement of the Commission, matters arising from general increase proceedings, or in cases of calamitous visitation where the Vice Chairman has been delegated authority at 49 CFR 1011.5(b)(3).

(3) In matters arising from 49 U.S.C. 10701, 10702, 10761, and 10762, the board is authorized to grant or withhold special tariff authority or other permissible waivers of rules regarding tariffs or schedules, including authorization for the cancellation of suspended tariffs or schedules, that have not involved taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(4) In matters arising from 49 U.S.C. 10713, the board is authorized:

(i) To grant or withhold discovery of railroad transportation contracts;

(ii) To institute investigations of railroad transportation contracts; and

(iii) To grant or withhold relief from 49 CFR 1313.7(a), (b), (c), and (d) governing the construction and filing of railroad transportation contracts and railroad transportation contract summaries.

(b) *OCCA boards.* (1) Insurance Board. (i) Matters arising under 49 U.S.C. 10924 and 10927, regarding bonds or other security to assure financial responsibility of brokers, and 49 U.S.C. 10927, re-

garding motor carriers providing bonds, insurance, or other security for the protection of the public, except matters involving taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(ii) Matters arising under 49 U.S.C. 10329 and 10330 regarding the designation by motor carriers and brokers of persons on whom orders and notices may be served and the designation of agents on whom service of process may be made, except matters involving taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(iii) Matters arising under 49 U.S.C. 11711 regarding review and approval of claim dispute settlement programs submitted by motor common carriers of household goods, and revocation or suspending approval of such programs if the carrier(s) fail to comply with that statute. The Insurance Board shall certify a representative sampling of proposed dispute settlement programs to the Commission.

(2) Motor Carrier Leasing Board. Matters arising under 49 U.S.C. 10321, 11101, and 11107 and the implementing regulations at 49 CFR part 1057 regarding the lease and interchange of vehicles by motor carriers, except matters involving taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(3) Railroad Service Board. Matters regarding car-service except controversies between carriers as to compensation, under 49 U.S.C. 11123, 11124, 11127, and 11128, which have not involved taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(4) Revocation Board. Entry of show cause orders under 49 U.S.C. 11701 and 10925 (b)(1), (c)(1), and (c)(3) directed to motor carriers, brokers, water carriers, and household goods freight forwarders who have failed to submit the proper application fee or to file required annual reports; and determination of uncontested motor carrier, broker, water carrier, and household goods freight forwarder suspension, change, or revocation proceedings under 49 U.S.C. 10925 that have not involved

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taking testimony at a public hearing. The Motor Carrier Board is delegated revocation authority in connection with licensing matters at § 1011.6(g)(7).

(5) Any matter referred to an OCCA Board that is subsequently assigned for taking testimony at a public hearing shall be withdrawn from the board.

(6) The Railroad Service Board will establish and oversee modified hearing procedures implementing section 226 of the Staggers Rail Act of 1980, Public Law No. 96-448, which revises 49 U.S.C. 11123(a) and provides for issuance of extensions of emergency service orders by the Commission. Each order issued under revised 49 U.S.C. 11123(a) will contain a notice of the hearing procedures to be followed with respect to any extension of that order.

(c) *Released Rates Board.* Matters arising under 49 U.S.C. 10730(a) regarding applications to establish released rates and ratings that have not involved taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(d) *Accounting Board.* (1) Authority:

(i) To permit departure from general rules prescribing uniform systems of accounts for carriers and other persons under the revised Interstate Commerce Act, subtitle IV of title 49 of the U.S. Code, and from the regulations governing the forms and recording of passes for carriers and other persons under the Act;

(ii) To prescribe rates of depreciation to be used by railroad and water carriers;

(iii) To issue special authorizations permitted by the regulations governing the destruction of records of carriers subject to the Act;

(iv) To grant extensions of time for filing annual, periodical, and special reports in matters that do not involve taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits; and

(v) To issue valuation reports in matters that do not involve taking testimony at public hearings or the submission of evidence by opposing parties in the form of affidavits.

(2) The board may certify any matter assigned to it to the Vice Chairman of the Commission.

(e) *Special Docket Board.* Disposition of special docket and tariff reconciliation proceedings under 49 CFR 1130.2(e), (f) and (g).

(f) *Regional Motor Carrier Boards.* (1) Matters arising under 49 U.S.C. 10928 regarding applications for temporary authority by common or contract carriers by motor vehicle or water, except matters involving broad questions of policy, matters in which the decision of the boards would be inconsistent with a decision of the Commission, and matters in which substantially the same question is already before the Commission.

(2) Effective June 21, 1993, authority to process applications (including all matters related thereto) under 49 U.S.C. 10530 filed by, and issue certificates of registration to, foreign motor carriers and foreign motor private carriers.

(g) *Motor Carrier Board.* (1) Pre-publication matters in operating rights applications of motor carriers, water carriers, household goods freight forwarders, and property brokers.

(2) Motor passenger carrier and water carrier finance applications under 49 U.S.C. 11343-11344, and small carrier transfer applications under 49 U.S.C. 10926.

(3) Temporary authority applications related to finance proceedings under 49 U.S.C. 11349.

(4) Applications that have not involved taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits, under:

(i) 49 U.S.C. 10321, relating to the transfer of brokers' licenses; and

(ii) 49 U.S.C. 10931 and 10932, relating to the transfer of Certificates of Registration and rights to operate pending determination of applications for Certificates of Registration.

(5) Issuance of decisions substituting applicants in non-rail licensing proceedings and finance proceedings where operating authority has not yet been issued.

(6) Issuance of decisions on requests by motor passenger contract carriers for exemption from the tariff filing requirements of 49 U.S.C. 10702(b), 10761(b), and 10762(f).

(7) Authority to decide all routine appeals from initial actions of the Motor Carrier Board. Non-routine appeals from initial actions of the Motor Carrier Board shall be certified by the Board to the Secretary of the Commission for disposition.

[58 FR 29357, May 20, 1993, as amended at 59 FR 65505, Dec. 20, 1994; 60 FR 2544, Jan. 10, 1995]

§ 1011.7 Delegations of authority by the Chairman.

(a)(1) This section provides for delegations of authority by the Chairman of the Interstate Commerce Commission to individual Commission employees.

(2) The Chairman of the Commission may remove for disposition any matter delegated under this section, and any matter delegated under this section may be referred by the Commission employee to the Chairman for disposition.

(b)(1) The Chairman of the Commission will decide appeals from decisions of employees acting under authority delegated under this section. Appeals must be filed within 10 days after the date of the employee's action, and replies must be filed within 10 days after the due date for appeals. Appeals are not favored and will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.

(2) The Chairman may on his own motion review, reverse, or modify any decision of an employee acting under authority delegated under this section.

(c)(1) As used in this paragraph, *procedural matter* includes, but is not limited to, the assignment of the time and place of hearing; the assignment of proceedings to Administrative Law Judges; the issuance of decisions directing special hearing procedures; the establishment of dates for filing statements in cases assigned for handling under modified (non-oral hearing) procedure; the consolidation of proceedings for hearing or disposition; the postponement of hearings and of procedural dates; the waiver of formal specifications for pleadings; and extensions of time for filing pleadings. It does not include interlocutory appeals from the rulings of hearing officers; nor does it

include postponement of the effective date of:

- (i) Decisions pending judicial review,
- (ii) Decisions of the entire Commission,
- (iii) Cease and desist orders,
- (iv) Orders suspending or revoking operating authority, or
- (v) Final decisions where petitions for discretionary review have been filed under 49 CFR 1115.5.

(2) Unless otherwise ordered by the Commission in individual proceedings, authority to dispose of procedural matters arising before issuance of an initial decision in proceedings assigned for handling under oral hearing procedure or assigned to an Administrative Law Judge under modified procedure is delegated to the Chief Administrative Law Judge of the Commission. Notwithstanding this delegation, Commissioners, Administrative Law Judges, and Joint Boards appointed under 49 U.S.C. 10341–10344 retain the authority to dispose of procedural matters in proceedings assigned to them.

(3) Unless otherwise ordered by the Commission in individual proceedings, authority to dispose of routine procedural matters in proceedings assigned for handling under modified procedure, other than those assigned to an Administrative Law Judge, or arising after issuance of an initial decision by a hearing officer in a proceeding that has been the subject of an oral hearing, is delegated to the Secretary of the Commission. The Secretary shall also have authority, unless otherwise ordered by the Chairman or by a majority of the Commission in individual proceedings, to decide whether operating rights application and complaint proceedings shall be handled under the modified procedure or be assigned to the Office of Hearings. In carrying out these duties, the Secretary shall consult, as necessary, with the General Counsel and the Director of any other Commission Office to which an individual proceeding has been assigned.

(d) Except as provided at 49 CFR 1113.3(b)(1), authority to dismiss a complaint on complainant's request, or an application on applicant's request, is delegated to the Secretary and to the Chief Administrative Law Judge.

(e) The entry of reparation orders, responsive to findings authorizing the filing of statements of claimed damages as provided at 49 CFR 1133.2, is delegated to the Director of the Office of Tariffs.

(f) Authority to grant or deny access to waybills and to statistics reported under orders of the Commission is delegated to the Director of the Office of Economics.

(g) Certain accounts in the Uniform Systems of Accounts, 49 CFR parts 1200 through 1207, require Commission approval to use. Authority to grant or deny requests for use of these accounts is delegated to the Director of the Office of Economics, the Deputy Director of Economics—Accounts, and the Chief of the Section of Audit and Accounting.

(h) The Secretary of the Commission is delegated authority, under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, to:

(1) Sign and transmit to the Small Business Administration certifications of no significant economic effect for proposed rules, that if adopted by the Commission, will not have a significant economic impact on a substantial number of small entities; and

(2) Sign and transmit findings regarding waiver or delay of an initial regulatory flexibility analysis or delay of a final regulatory flexibility analysis.

(i) Issuance of certificates and decisions when no protest is received within 30 days after an abandonment or discontinuance application is filed under 49 U.S.C. 10903, and the Commission must find, under 49 U.S.C. 10904(b) that the public convenience and necessity require or permit the abandonment or discontinuance, is delegated to the Director of the Office of Proceedings.

(j) Issuance of certificates and decisions authorizing Consolidated Rail Corporation to abandon or discontinue service over lines for which an application under section 308 of the Regional Rail Reorganization Act of 1973 has been filed is delegated to the Director of the Office of Proceedings.

§1011.8 Delegations of authority by the Commission to specific offices of the Commission.

(a) *Office of Public Assistance.* (1) There is established an Office of Public Assistance. The Office assumes the functions previously assigned to the former Office of Special Counsel, the former Small Business Assistance Office, and the State/Community Affairs Liaison position formerly in the Office of Legislation and Governmental Affairs.

(2) The Office shall be managed by a Director, who also serves as Special Counsel of the Commission, and by a Deputy Director, who also serves as the Small Business Assistance Officer of the Commission. The Special Counsel shall be appointed by the Chairman, subject to the approval of a majority of the Commission.

(3) The mission of the Office is to assist the Commission and the public in determining and representing the public interest, with regard to the Interstate Commerce Act and related statutes. The primary function of the Office is to act as the focal point to coordinate Commission activities ensuring that:

(i) The public interest is fully developed in proceedings before the Commission and especially to contribute to the development of a complete record in proceedings in which important aspects of the public interest otherwise would not be explored adequately, particularly proceedings affecting the interests of bus passengers, household goods shippers, owner operators, and classes II and III rail carriers and the shippers they serve;

(ii) Small and minority-owned transportation entities, transportation-related entities, consumer groups, small communities, carriers and shippers, and State regulatory officials are advised on the applicability of the law and of the availability of assistance from the Commission as this applies to their enterprise; and

(iii) The Commission is advised on policy matters regarding its small business assistance functions and programs.

(4) The Office will participate as a party in Commission proceedings, including rulemakings, only on the filing of a petition seeking, and on the approval of a majority of the Commission granting, such recourse.

(5) The Office of Hearings, in noticing cases for public hearings, shall advise parties of the availability of assistance from the Office of Public Assistance.

(b) *Office of the Secretary.* The Secretary of the Commission is delegated the following authority:

(1) Whether (in consultation with involved Offices) to waive filing fees set forth at 49 CFR 1002.2(f).

(2) To issue, on written request, informal opinions and interpretations (exclusive of informal opinions and interpretations on carrier tariff provisions), which are not binding on the Commission. In issuing informal opinions or interpretations, the Secretary shall consult with the Director of the appropriate Commission office. Such requests must be directed to the Office of the Secretary, Legal Branch, Interstate Commerce Commission, Washington, DC 20423. Authority to issue informal opinions and interpretations on carrier tariff provisions is delegated at 49 CFR 1011.8(d)(2) to the Office of Tariffs.

(c) *Office of Proceedings.* The Director of the Office of Proceedings shall have authority initially determinative of the following:

(1) Whether to designate protested abandonment proceedings for investigation (including action on requests for oral hearing).

(2) Whether offers of financial assistance satisfy the statutory standards of 49 U.S.C. 10905(d) for the purpose of negotiations or, in exemption proceedings, for purposes of partial revocation and negotiations.

(3) Whether: (i) To impose, modify, or remove environmental and historic preservation conditions; and

(ii) In abandonment proceedings, to impose public use conditions under 49 U.S.C. 10906 and the implementing regulations at 49 CFR 1152.28.

(4) In abandonment proceedings, when a request for interim trail use/rail banking is filed under 49 CFR 1152.29, determining whether the National Trails System Act, 16 U.S.C.

1247(d), is applicable and, where appropriate, issuing Certificates of Interim Trail Use or Abandonment (in application proceedings) or Notices of Interim Trail Use or Abandonment (in exemption proceedings).

(5) In any abandonment proceeding where interim trail use/rail banking is an issue, to make such findings and issue decisions as may be necessary for the orderly administration of the National Trails System Act, 16 U.S.C. 1247(d).

(6) Whether to institute requested declaratory order proceedings under 5 U.S.C. 554(e).

(7) In all exemption proceedings under 49 U.S.C. 11343(e) involving non-rail intermodal parties, to make such findings as necessary and to issue notices of exemption.

(8) To issue decisions, after 60 days' notice by any person discontinuing a subsidy established under 49 U.S.C. 10905 and at the railroad's request:

(i) In application proceedings, immediately issuing certificates of abandonment or discontinuance; and

(ii) In exemption proceedings, immediately vacating the decision that postponed the effective date of the exemption.

(9) In proceedings under the Feeder Railroad Development Program under 49 U.S.C. 10910 and the implementing regulations at 49 CFR part 1151:

(i) Whether to accept or reject primary applications under § 1151.2(b); competing applications under § 1151.2(c); and incomplete applications under § 1151.2(d).

(ii) Whether to grant waivers from specific provisions of 49 CFR part 1151.

(10) In exemption proceedings subject to environmental or historic preservation reporting requirements, to issue a decision, under 49 CFR 1105.10(g), making a finding of no significant impact where no environmental or historic preservation issues have been raised by any party or identified by the Commission's Section of Energy and Environment.

(11) Whether to issue notices of exemption under 49 U.S.C. 10505:

(i) For acquisition, lease, and operation transactions under 49 U.S.C. 10901 and the implementing regulations at 49 CFR part 1150, subpart D; and

(ii) For rail transactions under 49 U.S.C. 11343 and the implementing regulations at 49 CFR 1180.2(d).

(12) Whether to issue rail modified certificates of public convenience and necessity under 49 CFR part 1150, subpart C.

(13) Whether to waive the regulations at 49 CFR part 1152, subpart C, on appropriate petition.

(14) To reject applications, petitions for exemption, and verified notices (filed in class exemption proceedings) for noncompliance with the environmental rules at 49 CFR part 1105.

(15) To reject applications by Burlington Northern Railroad Company to abandon rail lines in North Dakota exceeding the 350-mile cap of section 402 of Public Law 97-102, 95 Stat. 1465 (1981), as amended by The Department of Transportation and Related Agencies Appropriations Act, 1992, Public Law 102-143, section 343 (Oct. 28, 1991).

(16) Whether to extend the 120-day limit within which 49 U.S.C. 10706(b)(3)(B)(vii) mandates that rate bureaus shall finally dispose of rules or rates docketed with them.

(17) Whether, absent controversy or unusual circumstances, to issue notices of provisional recertification under *State Intrastate Rail Rate Authority*, 5 I.C.C.2d 680, 684 (1989).

(d) *Office of Tariffs*. The Office of Tariffs is delegated the authority to:

(1) Reject tariffs, schedules, railroad transportation contracts, and railroad transportation contract summaries filed with the Commission that violate applicable statutes, rules, or regulations, except when such summary rejection of facially defective tariff filings would give rise to potential undercharge problems. In such event, the defective tariff filings shall not be rejected and instead shall become effective on schedule provided that corrections are filed within 15 days. Any rejection of a tariff, schedule, contract, or summary may be by letter signed by or for the Director, Office of Tariffs, or the Chief, Section of Tariff Maintenance and Compliance, Office of Tariffs.

(2) Issue, on written request, informal opinions and interpretations on carrier tariff provisions, which are not binding on the Commission.

PART 1012—MEETINGS OF THE COMMISSION

Sec.

1012.1 General provisions.

1012.2 Time and place of meetings.

1012.3 Public notice.

1012.4 Public participation.

1012.5 Transcripts; minutes.

1012.6 Petitions seeking to open or close a meeting.

1012.7 Meetings which may be closed to the public.

AUTHORITY: 5 U.S.C. 552b(g), as amended by Pub. L. 94-409, 90 Stat. 1241; 49 U.S.C. 17(3), 24 Stat. 385, as amended.

SOURCE: 42 FR 13796, Mar. 11, 1977, unless otherwise noted.

§ 1012.1 General provisions.

(a) The regulations contained in this part are issued pursuant to the provisions of 5 U.S.C. 552b(g), added by section 3(a) of the Government in the Sunshine Act, Pub. L. 94-409 (Act), and section 17(3) of the Interstate Commerce Act. They establish procedures under which meetings of the Interstate Commerce Commission (Commission), Divisions of the Commission (Division), and standing committees of the Commission are held. They apply to oral arguments as well as to deliberative conferences. They apply to meetings of the Commission and of Divisions and committees of the Commission where the Division or committee is empowered to act on the Commission's behalf, but not where a Division or committee is meeting only to formulate an internal recommendation to the Commission. They include provisions for giving advance public notice of meetings, for holding meetings which may lawfully be closed to the public, and for issuing minutes and transcripts of meetings.

(b) The words *meeting* and *conference* are used interchangeably in this part to mean the deliberations of at least a majority of the members of the Commission, a Division, or a committee of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business. They do not include meetings held to determine whether some future meeting should be open or closed to the public. They do not include the deliberations of members of